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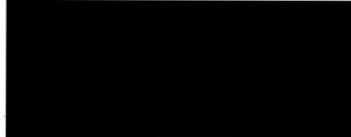


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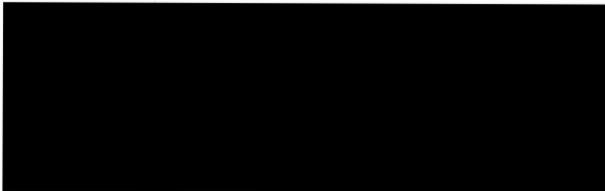
FILE: WAC 04 049 52299 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its previous decision. The motion is granted, but, upon reopening and reconsideration, the AAO's previous decision to dismiss the appeal will be affirmed.

In order to employ the beneficiary as a speech pathologist in the State of California, the petitioner, a provider of rehabilitation services, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

In its previous decision, dated August 31, 2005, the AAO dismissed the appeal and denied the petition on the basis that the evidence of record failed to satisfy the H-1B requirements pertaining to beneficiary qualifications for a specialty occupation position that requires temporary or permanent licensure. The AAO found that the evidence of record does not establish that, at the time the petition was filed, the beneficiary either possessed a license to practice as a speech pathologist in California or had met all California requirements for the issuance of a speech pathologist license except obtaining a social security number.¹

The AAO's previous decision correctly cited section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2)(A), as directing that an H-1B beneficiary must have "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation" in order to be qualified to perform the services of a specialty occupation. The previous decision also correctly cited the relevant licensure requirements at 8 C.F.R. § 214.2(h)(4)(v) as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, and the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.
- B. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under

¹ In the instant case, the license at issue is a temporary license for acquiring professional experience under sections 1399.153 to 1399.153.10 of Article 4 of the Speech-Language Pathology and Audiology Regulations at Title 16 of the California Code of Regulations.

supervision could fully perform the duties of the occupation, H classification may be granted.

The AAO's previous decision also quoted the following statement of policy in the CIS Memorandum from Thomas E. Cook, Acting Assistant Commissioner, INS Office of Adjudications, *Social Security Cards and the Adjudication of H-1B Petitions*, HQ 70/6.2.8 (November 20, 2001) (hereinafter "Cook Memo"):

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of one year provided that the only obstacle to obtaining state licensure is the fact that the alien cannot obtain a social security card for the SSA [Social Security Administration]. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card . . . [Emphasis in the original.]

The motion consists of several submissions. Counsel's September 29, 2005 letter contends that the beneficiary qualifies to serve in the proffered position under the Citizenship and Immigration Service's (CIS) policy on situations where lack of a social security number is the only impediment to licensure. Counsel relies upon correspondence with the California Speech-Language Pathology and Audiology Board (SLP Board) as establishing that the beneficiary has met all requirements for temporary licensure except obtaining a social security number. Counsel also submits: (1) a paragraph requesting confirmation that the beneficiary meets all licensure requirements except a social security number, which counsel identifies as the body of an e-mail that he sent to the SLP Board; (2) a document from the SLP, entitled "List of Items Required of RPE [Required Professional Experience] Applicant for Speech-Language Pathology or Audiology Licensure" (List of Items Required); (3) the section of the California Business and Professions Code (CBPC) dealing, in part, with the requirement that licensure applicants possess a social security number; (4) and a pamphlet entitled "Planning to Start Your Required Professional Experience (RPE) for Speech-Language Pathology or Audiology Licensure" (SLP Board pamphlet).

The AAO finds that, contrary to counsel's argument, the evidence of record does not establish that the beneficiary has met the licensure requirements of 8 C.F.R. § 214.2(h)(4)(v) as implemented under the Cook Memo policy regarding situations where lack of a social security number is the only impediment to licensure. The AAO bases its decision upon its review and consideration of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional information (RFE); (3) the documents that counsel submitted in response to the RFE; (4) the director's denial letter; (5) the documents submitted on appeal; (6) the AAO's previous decision dismissing the appeal; and (7) the submissions comprising counsel's motion to reopen and reconsider.

In its previous decision, the AAO was correct in noting, as follows, that, for a petition to merit approval, its beneficiary must be qualified as of the date the petition was filed:

Under 8 C.F.R. § 103.2(b)(12) a petitioner must establish that it was eligible for a requested benefit at the time the petition was filed. *See also* 8 C.F.R. § 214.2(h)(4)(iv)(A), which provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by . . . required evidence sufficient to establish that the beneficiary *is qualified* to perform services in a specialty." [Emphasis added.] A visa petition may not be approved at a later

date based on a set of facts not present at the time of filing. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). . . .

It is undisputed that the proffered position requires licensure which the petitioner did not possess on the date that the petition was filed. The question now before the AAO is whether, as now expanded with the submissions on motion, the evidence of record is sufficient to show that, at the time the petition was filed, the beneficiary was qualified for the relevant temporary licensure in all respects except the requirement for a social security number.

Neither the List of Items Required, the SLP Board pamphlet, nor the submitted section of the CBPC states that the documents submitted by the petitioner qualify the beneficiary for licensure upon receipt of a social security number. Further, the February 25, 2004 letter from the SLP Board does not indicate that the Board has determined that the beneficiary meets all qualifications for licensure except a social security number, but that it has ceased processing the application, pending receipt of the social security number.

The AAO accords no evidentiary weight to counsel's descriptions of his e-mail correspondence with the SLP Board, as they are not substantiated by copies of the documents cited by counsel. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record of proceeding does not contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. The record does not contain evidence from the California SLP Board stating that the beneficiary's educational qualifications are acceptable and that the beneficiary will be issued a license upon submission of a social security number.

As the evidence of record does not establish that the beneficiary was qualified to serve as a speech pathologist in California when the petition was filed on December 11, 2003, and, as the record does not contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure was the lack of a social security card, there is no basis for overturning the AAO's previous decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated August 31, 2005, is affirmed. The petition is denied.